

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF MISSISSIPPI
SOUTHERN DIVISION

RICHARD TART

PETITIONER

v.

CIVIL NO. 1:13-cv-347-HSO-RHW

RONALD KING, et. al

RESPONDENTS

**ORDER ADOPTING PROPOSED FINDINGS OF FACT AND
RECOMMENDATION, GRANTING RESPONDENTS' MOTION TO
DISMISS, AND DENYING AS MOOT PETITIONER'S APPLICATION FOR
A WRIT OF HABEAS CORPUS**

This matter is before the Court on the Proposed Findings of Fact and Recommendation [12] of United States Magistrate Judge Robert H. Walker entered in this cause on February 24, 2014. The Magistrate Judge recommended that Respondents' Motion [11] to Dismiss be granted and Petitioner's 28 U.S.C. § 2254 Application [1] for a Writ of Habeas Corpus be denied as moot. Rec. [12] at 1-2.

On September 4, 2013, Petitioner filed his § 2254 Application, asserting a constitutional right to be considered for parole eligibility. Petitioner alleged that, because he did not have a parole eligibility date, he was being required to serve life without parole even though his sentence allowed parole. He argued that, in effect, he received an enhancement that was not imposed by the trial judge.

Respondents filed a Motion [11] to Dismiss in which their counsel indicated that the Mississippi Department of Corrections had been contacted, and Petitioner's inmate records had been changed to reflect a parole eligibility date. Respondents submit that Petitioner's § 2254 Application is now moot because Petitioner is now parole eligible and has received all the relief he requests in his Application.

Petitioner did not file a Response to Respondents' Motion to Dismiss and therefore

has not disputed that his § 2254 Application is now moot.

The Clerk of Court mailed the Magistrate Judge's Proposed Findings of Fact and Recommendation to Petitioner at his address of record. The Proposed Findings of Fact and Recommendation advised Petitioner that he had fourteen days from the date he received the Proposed Findings of Fact and Recommendation to serve and file written objections. Rec. [12] at 2. Petitioner has not filed any objections.

Where a party fails to file specific objections to a magistrate's proposed findings of fact and recommendation, the district court reviews the proposed findings of fact and recommendation for findings and conclusions that are clearly erroneous or contrary to law. 28 U.S.C. § 636(b)(1); *see United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989).

The Court finds that the Magistrate Judge properly recommended that Respondents' Motion [11] to Dismiss be granted and Petitioner's § 2254 Application [1] be denied as moot. After referral of hearing by this Court, no objections having been filed as to the Proposed Findings of Fact and Recommendation [12], and the Court, having fully reviewed the same as well as the record and relevant law in this matter, finds that Proposed Findings of Fact and Recommendation [12] is neither clearly erroneous nor contrary to law and should be adopted in its entirety as the opinion of this Court.

IT IS, THEREFORE, ORDERED AND ADJUDGED that the Proposed Findings of Fact and Recommendation [12] of United States Magistrate Judge Robert H. Walker is adopted in its entirety as the opinion of this Court.

IT IS, FURTHER, ORDERED AND ADJUDGED that Respondents' Motion [11] to Dismiss is **GRANTED**.

IT IS, FURTHER, ORDERED AND ADJUDGED that the 28 U.S.C. § 2254 Application for a Writ of Habeas Corpus [1] filed by Petitioner Richard Tart is **DENIED AS MOOT**, and this action is **DISMISSED WITH PREJUDICE**. A separate judgment will be entered in accordance with this Order as required by Fed. R. Civ. P. 58.

SO ORDERED AND ADJUDGED, this the 2nd day of April, 2014.

s/ Halil Suleyman Ozerden

HALIL SULEYMAN OZERDEN
UNITED STATES DISTRICT JUDGE